

Section 707.B-Transactions between partner and partnership.

26 CFR 1.707-1: Transactions between partner and partnership.

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ISSUE

Is a transfer of partnership property to a partner in satisfaction of a guaranteed payment under section 707(c) a sale or exchange under section 1001, or a distribution under section 731?

FACTS

Partnership purchased Blackacre for \$500x. A, a partner in Partnership, is entitled to a guaranteed payment under section 707(c) of \$800x. Subsequently, when the fair market value of Blackacre is \$800x and Partnership's adjusted basis in Blackacre is \$500x, Partnership transfers Blackacre to A in satisfaction of the guaranteed payment to A.

LAW AND ANALYSIS

Section 731(b) provides that no gain or loss shall be recognized to a partnership on a distribution to a partner of property, including money.

Section 707(c) provides that, to the extent determined without regard to the income of the partnership, payments to a partner for services or for the use of capital are considered as made to one who is not a member of the partnership, but only for the purposes of § 61(a) (relating to gross income) and, subject to § 263, for purposes of § 162(a) (relating to trade or business expenses).

Section 61(a)(3) provides the general rule that gross income includes gains derived from dealings in property. In addition, section 1001(a) provides that the gain from the sale or other disposition of property shall be the excess of the amount realized over the adjusted basis provided in section 1011 for determining gain, and the loss shall be the excess of the adjusted basis over the amount realized.

Section 1001(b) further provides, in part, that the amount realized from the sale or other disposition of property shall be the sum of any money received plus the fair market value of the property (other than money) received.

A taxpayer that conveys appreciated or depreciated property in satisfaction of an obligation, or in exchange for the performance of services, recognizes gain or loss equal to the difference between the basis in the distributed property and the property's fair market value. See, e.g., International Freighting Corp., Inc. v. Commissioner, 135 F.2d 310 (2d Cir. 1943), United States v. General Shoe Corp., 282 F.2d 9 (6th Cir. 1960).

A transfer of partnership property in satisfaction of a partnership's obligation to make a guaranteed payment under section 707(c) is a sale or exchange under section 1001. Because the transfer is a sale or exchange under section 1001, it is not a distribution within the meaning of section 731. Accordingly, the nonrecognition rule in

section 731(b) does not apply to the transfer.

Partnership realizes a \$300x gain when Partnership transfers Blackacre in satisfaction of its section 707(c) guaranteed payment to A, the difference between the adjusted basis of the property (\$500x) to the partnership and the property's fair market value (\$800x).

HOLDING

A transfer of partnership property to a partner in satisfaction of a guaranteed payment under section 707(c) is a sale or exchange under section 1001, and not a distribution under section 731.

DRAFTING INFORMATION

The principal author of this revenue ruling is Jason T. Smyczek of the Office of the Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue ruling contact Mr. Smyczek at (202) 622-3050 (not a toll free call).